

MF 06-7

Tax Type: Motor Fuel Use Tax

Issue: Fuel Credits

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**THE ABC COMPANY**

**Taxpayer**

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**Docket # 04-ST-0000  
Acct # 0-00000  
NTL # 00-000000 0**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Todd M. Turner of Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. for The ABC Company.

Synopsis:

The Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to Unocal, the predecessor-in-interest to The ABC Company ("taxpayer") for motor fuel tax. The assessment was issued due to a transaction that took place on December 4, 1996. The taxpayer's request for a discretionary hearing was granted, and an evidentiary hearing was held. On December 4, 1996, XYZ Oil transferred 420,000 gallons of diesel fuel to the taxpayer. XYZ Oil reported the sale on its Illinois motor fuel tax return for distributors/suppliers. During the hearing the taxpayer argued that XYZ Oil mistakenly reported the transaction on its Illinois return because the fuel was delivered to

the taxpayer in Indiana, not Illinois. The taxpayer maintains that the fuel was never possessed or owned in Illinois. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On December 4, 1996, XYZ Oil Corporation (“XYZ Oil”) sold 420,000 gallons of diesel fuel to The MMM Company.<sup>1</sup> The invoice for the transaction shows that the shipping origin is Anywhere, Illinois, and All Ours Pipe Line Company (“All Ours”) delivered the fuel. The batch number on the invoice is 00-0000-00-00-00-00. (Dept. Ex. #3, p. 5)

2. The receipt ticket from All Ours for the transaction has the same batch number: 00-0000-00-00-00-00. It also shows the location as “This Terminal.” (Taxpayer Ex. #7; Tr. pp. 42, 44-45)

3. The taxpayer’s inventory reporting schedule for the State of Indiana shows the receipt of 420,000 gallons of fuel from XYZ Oil and delivered by All Ours on December 4, 1996. It includes a portion of All Ours’s batch number: 00-00-00-0000. It also includes the following: “FROM: IN-0000.” The “IN” refers to Indiana, and the 0000 is the taxpayer’s internal reference for XYZ Oil. (Taxpayer Ex. #8; Tr. pp. 46, 49-50, 67)

4. The inventory schedule also shows the delivery of the fuel from XYZ Oil, Anywhere, Indiana to Refining in Anywhere, Indiana. (Taxpayer Ex. #8; Tr. p. 50)

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<sup>1</sup> The MMM Company is a predecessor-in-interest to the taxpayer. (Stip. 9)

5. The Schedule of Receipts for BBB Refining & Marketing, Inc. (“BBB”) that was filed with the State of Indiana shows that BBB shipped 420,000 gallons of fuel on December 4, 1996 from Anywhere, Indiana. The shipper is the party that pays for the transportation. The batch number for the transaction was 00-00-00-00-00-0, and the transporter was All Ours. BBB shipped the fuel to Wisconsin. BBB received the fuel from XXX Oil. (Taxpayer Ex. #1, p. 3; Dep. Tr.<sup>2</sup> pp. 9-16, 44; Tr. pp. 57-60)

6. The first two letters in a batch number identify the shipper. “00” refers to BBB. (Taxpayer Ex. #3; Dep. Tr. p. 16; Tr. pp. 87-88)

7. The “00” part of the batch code refers to the supplier. 00 refers to AAA and indicates that the fuel came from the AAA refinery in Anywhere, Indiana. (Taxpayer Ex. #3; Dep. Tr. p. 23; Tr. p. 96)

8. The other numbers in the batch number identify the product and the cycle of the product. (Taxpayer Ex. #3; Tr. pp. 88-90)

9. As fuel is being shipped through a pipeline, it may change ownership but the batch number does not change as long as it stays on the same pipeline. (Dep. Tr. pp. 25-26)

10. The batch number is a unique identifier used by the pipeline company to keep track of the product that it is moving. It is not likely that the same batch number is repeated. (Tr. pp 100, 104-105)

11. The references on the documents to This, Anywhere, and Somewhere are all cities in Indiana that are located within close proximity to one another. (Tr. pp. 67-68)

12. All Ours is a unidirectional pipeline. The fuel flows only one direction, from east to west. (Taxpayer Ex. #10; Tr. pp. 60-61, 96-97)

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<sup>2</sup> The citation to “Dep. Tr.” refers to the evidence deposition transcript of Jane Doe, who worked for BBB.

13. All Ours has three origin points: the This terminal in Indiana, the one terminal in Illinois, and the second terminal in Illinois. (Tr. pp. 95-96)

14. On October 15, 1997, the Department issued a Notice of Tax Liability to Unocal, the predecessor-in-interest to the taxpayer, showing total tax due in the amount of \$91,857.46. This tax was assessed on two different transactions. The assessment on one of the transactions was withdrawn. The assessment on the other transaction relating to the 420,000 gallons, plus accrued penalties and interest, is the one assessment that the parties are disputing. The tax on that transaction is \$89,981.60. (Stip. #10)

#### CONCLUSIONS OF LAW:

Section 2a of the Motor Fuel Tax Law imposes a tax upon the privilege of being a receiver in this State of fuel for sale or use. 35 ILCS 505/2a. The sole issue in this case is whether the fuel that the taxpayer received was received in Illinois or Indiana. The evidence supports a finding that it was received in Indiana.

All Ours is a unidirectional pipeline, and the fuel flows from east to west. The pipeline has three origin points: the This terminal in Indiana, the ONE terminal in Illinois, and the SECOND terminal in Illinois. The invoice received from XYZ Oil indicates that All Ours delivered the fuel, but it shows that the shipping origin is Anywhere, Illinois. Because All Ours does not have an origin point in Anywhere, it appears as though this is not accurate. The receipt ticket from All Ours has the same batch number that is on the XYZ Oil invoice, and it shows that the terminal is This, Indiana. On the taxpayer's report to the State of Indiana, it shows that the taxpayer received the fuel in Indiana.

The report that BBB filed with Indiana shows that 420,000 gallons of fuel with the same batch number was shipped from Somewhere, Indiana. The testimony from an employee of All Ours indicated that it is not likely that the exact same batch number would be repeated in the same day or even the same year. (Tr. pp. 104-105) An independent accountant for the taxpayer indicated that the reason for the discrepancy concerning the cities in Indiana is because the accounting department's first priority is to make sure that the state is accurate rather than the city. (Tr. pp. 67-68) He said that if an account was already set up for XYZ Anywhere rather than This, then the accounting department would tend to use the account already set up if the city is nearby. *Id.* From the evidence presented, it appears as though the fuel was delivered to the taxpayer in Indiana where it changed ownership and was subsequently shipped by BBB from Indiana to Wisconsin. If the fuel was initially delivered in Illinois, then it could not have then been sent back to BBB in Indiana on All Ours because that pipeline does not send fuel from west to east. The evidence supports a finding that the taxpayer did not receive the fuel in Illinois.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be dismissed.

Linda Olivero  
Administrative Law Judge

Enter: May 9, 2006